

1 your conversations with Mr. Nourain would come to a contrary  
2 -- would lead you to a contrary conclusion?

3 A No, they would not.

4 Q Thank you, sir.

5 JUDGE SIPPEL: Before you pass off that document,  
6 since it's in front of the Witness right now --

7 MR. BEGLEITER: Sure.

8 JUDGE SIPPEL: -- do you see that sentence just up  
9 above the one that was read to you by counsel, the one about  
10 him inadvisedly [sic] assuming --

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Are you familiar with that  
13 sentence? I mean, you know what it means? Do you  
14 understand that sentence.

15 THE WITNESS: To have granted -- yes, I am.

16 JUDGE SIPPEL: All right. Now, Mr. -- Mr. Nourain  
17 has testified in this case -- and I'm going to paraphrase it  
18 of course -- but he said he had a way of estimating when the  
19 STAs should be granted. And it came from -- it started with  
20 a time period when he received the information -- the final  
21 information that he needed from COMSEARCH which we knew was  
22 communicated to you. And then he had a count system that  
23 would bring him up to -- you know, maybe it was ten days  
24 plus 30 days or something. It came out to about a 40 day  
25 time line. And when that fortieth day was hit, bingo, he

1     went to -- he called the folks up and said let's go; we're  
2     going to activate.

3             THE WITNESS:   Okay.

4             JUDGE SIPPEL:   Did he ever talk to you about how  
5     he did that?

6             THE WITNESS:   No, not at all.

7             JUDGE SIPPEL:   It never came up?

8             THE WITNESS:   No.

9             JUDGE SIPPEL:   Okay.

10            MR. BEGLEITER:   All right.

11            BY MR. BEGLEITER:

12            Q     Now, sir, I'd like to also point out two other  
13     things that Mr. Beckner pointed out to you yesterday.   And  
14     that's -- if you'll go to Exhibit 21 of the Time  
15     Warner/Cablevision thick -- thick volume.

16            A     Yes.

17            Q     And I'd like to read to yourself now Numbers 5 and  
18     9.

19            MR. BEGLEITER:   I'm not going to read it out loud,  
20     Your Honor.   I don't think it's worth it.

21            JUDGE SIPPEL:   I'm sorry.   What was that tab  
22     again?

23            MR. BEGLEITER:   21, page 020, and paragraphs 5 and  
24     9.   They were read -- portions were read to Mr. Lehmkuhl  
25     yesterday by Mr. Beckner.   Rather than go -- have it read

1 because they're -- it would take a moment or two, I'll ask  
2 Mr. Lehmkuhl to read it to himself and I'll ask a follow-up  
3 question.

4 JUDGE SIPPEL: All right. Let's go off the record  
5 while he reads it. And when you're ready, tell us.

6 THE WITNESS: Okay. Thank you.

7 (A discussion was held off the record.)

8 BY MR. BEGLEITER:

9 Q This is -- this is a declaration signed by Mr.  
10 Nourain on 6/12 -- which is dated 6/12/95?

11 A Yes.

12 Q Within those paragraphs, is there any information  
13 that you had back in June of 1995 which would be -- which  
14 would be contrary to the information contained in those  
15 paragraphs?

16 A No.

17 MR. BECKNER: Object to the form of the question,  
18 Your Honor. He's asking basically for the Witness'  
19 knowledge of what was in Mr. Nourain's mind. And I don't  
20 think he's competent --

21 JUDGE SIPPEL: Well, there's been enough  
22 foundation laid in terms of the communication going back and  
23 forth between he and Mr. Nourain. I mean, that's why --

24 MR. BECKNER: Well, I would prefer the question  
25 asked if Mr. Nourain ever told him anything that was

1 inconsistent with paragraphs 5 or 9, something like that.

2 MR. BEGLEITER: I'm going beyond that. I asked  
3 does he know anything.

4 JUDGE SIPPEL: Yes. I don't care how he -- I  
5 mean, if he -- I'm going to overrule the objection. Go  
6 ahead.

7 MR. BEGLEITER: Okay.

8 BY MR. BEGLEITER:

9 Q Mr. Lehmkuhl, did you know anything that would be  
10 contrary?

11 A No.

12 Q Okay. And in -- in -- did you ever discuss this -  
13 - going back to this surreply, did you discuss this -- this  
14 surreply with Mr. Barr?

15 A Yes, I did.

16 Q Did you ever tell Mr. Barr that -- as to whether  
17 you had any problem with the rendition of Mr. Nourain's  
18 statement?

19 A I did review the document. And I did not  
20 communicate to Mr. Barr whether or not I had a problem with  
21 anything in there.

22 Q Okay. Did you have a problem?

23 A No, I did not.

24 MR. BEGLEITER: All right. One more area, Your  
25 Honor. This will take less than half an hour. And I think

1 this -- let me just check my notes. This may be it. That's  
2 it, Your Honor. I have no more questions.

3 JUDGE SIPPEL: All right. That's it. Then that's  
4 the end of the redirect. I -- I don't see anything that was  
5 raised that wasn't already covered on cross examination. We  
6 have -- that concludes your testimony, Mr. Lehmkuhl. You're  
7 excused. My instructions are that you're not to talk about  
8 the substance of your testimony with anybody who was  
9 testifying at this phase. And since we've been discussing  
10 the possibility of Mr. Barr testifying, I'll ask you not to  
11 talk to him about it either.

12 THE WITNESS: Okay.

13 JUDGE SIPPEL: Okay?

14 MR. BEGLEITER: I will note that Your Honor  
15 referred to Mr. Nourain's testimony during the testimony of  
16 Mr. Lehmkuhl -- during his testimony.

17 JUDGE SIPPEL: Yes, I know.

18 MR. BEGLEITER: Violating the order.

19 JUDGE SIPPEL: Well, that's -- I --

20 MR. WEBER: Your Honor --

21 JUDGE SIPPEL: I'm going to have to discipline  
22 myself. Yes, Mr. Weber?

23 MR. WEBER: I know this goes without saying, but  
24 your instructions to Mr. Lehmkuhl I'm sure also go to Mr.  
25 Gutmann, too, correct?

1 JUDGE SIPPEL: Yes. Of course. All right.

2 That's true, Mr. Lehmkuhl.

3 MR. BEGLEITER: That is whether he's paid by  
4 Liberty or not.

5 JUDGE SIPPEL: It's not a question of money. All  
6 right. We're -- let's -- we're excusing Mr. Lehmkuhl.

7 Let's go off the record for a minute.

8 (A discussion was held off the record.)

9 JUDGE SIPPEL: We're back on the record. Mr.  
10 Lehmkuhl has been excused. We're going to -- it's 12:15 and  
11 we're going to resume at 1:15. The question I have with  
12 respect to the documents, was there any review of the -- of  
13 Liberty's minutes, their corporate minutes during this  
14 period of January '95 to June '95 to see if there was any  
15 discussion about any of this?

16 MR. BEGLEITER: Your Honor, if you were a  
17 litigant, I would say objection, no foundation. There --  
18 when you say minutes, do you mean board of directors minutes  
19 such as --

20 JUDGE SIPPEL: Yes.

21 MR. BEGLEITER: You know, I don't --

22 MR. SPITZER: I think it's fair to say, Your  
23 Honor, I don't think there's ever been a formal board  
24 meeting of Liberty.

25 MR. BEGLEITER: We'll find out.

1 JUDGE SIPPEL: I mean, it's a legitimate question.

2 MR. BEGLEITER: No, it is. It is, Your Honor.

3 MR. SPITZER: Oh, absolutely. And we don't mean  
4 to make light of it, but there -- we are familiar with the  
5 realm of corporate documentation for Liberty Cable. We will  
6 check on this, but I am almost one hundred percent certain  
7 that there are no such documents because there has never  
8 been a formal meeting of that nature other if there needed  
9 to be minutes submitted to the Secretary of State just to  
10 incorporate and the fact of a meeting. But we are rather  
11 familiar with the principals and the way the company is run.

12 JUDGE SIPPEL: It's -- it's remote, but not beyond  
13 the realm --

14 MR. BEGLEITER: We will check. We will check  
15 everything.

16 JUDGE SIPPEL: All right.

17 MR. BEGLEITER: We're not like Time Warner. We  
18 don't have it lost.

19 JUDGE SIPPEL: That's enough. That's enough. I'm  
20 -- I'm cutting into your lunchtime here. We're in recess,  
21 Your Honor.

22 MR. BEGLEITER: I'm sorry, Your Honor. I  
23 apologize.

24 (Whereupon, at 12:15 p.m., the hearing recessed to  
25 reconvene at 1:15 p.m., this same day.)

1

2

3

6

7

9

10

11

13

15

## 16

17

18

20

23

2.4

25



1 background, the institutions from which you graduated and  
2 when?

3 A I attended Friends School, secondary school in  
4 Philadelphia. I then went to Princeton University and  
5 graduated from the Woodrow Wilson School there in 1962. I  
6 attended the Yale Law School immediately thereafter and  
7 graduated in 1965.

8 Q If you could -- when did you join Liberty Cable  
9 and the predecessor, Bartholdi?

10 A I joined Liberty in early 1991. I believe it was  
11 January.

12 Q If you could quickly walk through your career from  
13 1965 through 1991.

14 A After law school, I served in the military. I was  
15 a lieutenant in the Air Force. And my function was the  
16 chief of security police of the 903rd tactical airlift group  
17 as part of the 514th tactical airlift wing at MacGuire Air  
18 Force Base. After my career in the military, I took on an  
19 assignment as general counsel to the New York City Taxi  
20 Commission.

21 And thereafter, after a short assignment there  
22 when the job of the -- what was called the Taxi Study Panel  
23 ended, I took a job at Time -- at then Time Incorporated,  
24 actually. But I think it was Time Life at that point before  
25 it became Time Incorporated, and was assistant to the

1 publisher, then subscription manager. That was assistant to  
2 the publisher of Life and then subscription manager for  
3 Sports Illustrated.

4 In my last job at Time Inc. was in 1970 as  
5 director of corporate development for the corporation. I  
6 then left Time Incorporated to, with a couple of other  
7 fellows, form a company called Magazine Networks, a media  
8 company. And Time Incorporated was one of our major clients  
9 along with most of the other publishing businesses, magazine  
10 publishers. We built that firm; sold it to Minnesota  
11 Mining, to 3M in the late '70s.

12 I was director of a few companies at that point  
13 when I departed from 3M. They wanted me to go overseas and  
14 I want to stay in the United States; and worked actively on  
15 several of the companies that I was a director of.  
16 Thereafter, I was publisher of the New York Post from -- for  
17 a couple of years from I believe it was about, oh, '87 to  
18 '89; and then president and publisher of the National Sports  
19 Daily from approximately '89 to '91 when I joined then  
20 Liberty Cable.

21 Q And do you remember -- did you say earlier it was  
22 January '91 you joined Liberty?

23 A Yes, January or February, the beginning of the  
24 year.

25 Q The early part of 1991.

1           A     Yes.

2           Q     Could you describe -- first give us your title and  
3 then describe for us the responsibilities you had at Liberty  
4 Cable when you first joined.

5           A     I was president of the company and co-chief  
6 executive officer along with Howard Milstein. My  
7 responsibilities were those of a chief executive which was  
8 to be ultimately responsible for all operations of the  
9 company, specifically to -- to organize and have report to  
10 me a customer service department, an operations department,  
11 a marketing department, a finance department, and to oversee  
12 various legal initiatives that were emerging.

13                     One was to manage the application for access to  
14 the 18 gigahertz frequency which Liberty had pioneered with  
15 the FCC and was then just being granted or the process was  
16 being completed for the grant of access for private cable to  
17 that frequency; to oversee technology expansion of the  
18 company through joint ventures and partnerships with other  
19 companies.

20                     We had ideas about other technologies, direct  
21 satellite technologies then called video dialtone fiber  
22 technologies -- to oversee those partnerships; and to raise  
23 capital to support the accelerated expansion of the company.

24           Q     What were just generally the means about which you  
25 were considering possibly raising capital?

1           A     The major means at that point was to secure bank  
2     financing, which we did, toward eventually the goal of  
3     finding either an equity partner in the short term in some  
4     kind of either venture capital or mezzanine financing  
5     arrangement, to lead to either a public market so we could  
6     obtain capital from the public or effect a merger with a  
7     larger company who would provide us the means to expand  
8     nationally beyond New York.

9           Q     And I did hear you earlier mention 18 gigahertz.  
10    I'm going to try to steer us back to what is the general  
11    subject matter of this hearing. Could you tell us in the  
12    spring of 1994 -- early part of 1994 who were the various  
13    individuals who filled the positions you had mentioned? I  
14    think you sales operations, engineering, customer service.  
15    If you could describe how those individuals reported up  
16    through the structure of Liberty Cable.

17          A     In 1994 -- I believe by 1994, Bruce McKinnon had  
18    departed who was chief operating officer for a period. So  
19    at that point, the department heads were Bertina Ceccarelli  
20    who was the director of marketing; the head of customer  
21    service I believe at that juncture was Anne Rosenberg, the  
22    manager of customer service; the general manager of  
23    operations was Tony Ontiveros. I don't recall the  
24    controller at that moment in time. There was Dan Carrea.  
25    He was succeeded by another gentleman who became the

1 controller.

2 And then there were, in addition to those  
3 department heads, on the various legal matters be they  
4 financing of the company or city regulatory matters or  
5 federal regulatory matters, be they licensing or the various  
6 initiatives at the Commission on subjects like the  
7 homewiring docket, we would have different firms working on  
8 their specialties in those different areas.

9 Q Would you -- if you could just list those firms  
10 for us, please.

11 A The licensing was being done by Pepper & Corazzini  
12 firm. The FCC initiative in the homewiring area and also  
13 our participation in various video dialtone and open video  
14 system proceedings was being handled by the Ginsburg,  
15 Feldman firm by Henry Rivera. In -- and later, Wiley, Rein  
16 represented us on FCC matters, but not at that particular  
17 juncture. The -- in New York City --

18 Q May I just interrupt? Mr. Pettit wants it clear  
19 that that was not until June of 1995, is that correct?

20 A That's correct. The -- the -- in the New York  
21 City front the Fischbein, Badillo firm, I believe they had  
22 started representing us on city matters at that point or was  
23 shortly thereafter. On state cable commission matters, Jim  
24 McNaughton would represent us sometimes on New Jersey  
25 matters, sometimes on New York matters if Time Warner

1 brought them into a New York form and required his skills in  
2 New York. We would bring him in on New York matters.

3 Kelly, Drye was the firm who was working on  
4 financing matters for us and, in fact, at that juncture was  
5 working on a substantial draft of an S-1 document,  
6 securities filing for the company. And we were also  
7 involved with Townley & Updike on copyright matters, Sandy  
8 Edelman who was a partner there. And, of course, we're also  
9 involved with the Constantine firm on various corporate  
10 matters, financing, contracts, program contracts.

11 And I was also involved with Andrew Berkman who  
12 was our company general counsel. Although he had outside  
13 clients and had a practice of his own, he did a lot of the  
14 Liberty work. And finally, I was involved with Bob Lewis  
15 who was a -- an individual practitioner who was representing  
16 us in litigation matters as -- we had a proceeding at that  
17 point with -- involving Turner and some litigation with  
18 Turner over use of commercials that Time Warner didn't take  
19 very well.

20 Q These -- this multitude of lawyers whom you've  
21 listed, to whom did they report at Liberty Cable?

22 A They reported directly to me.

23 Q And if we could just run through some of the other  
24 individuals whom you had mentioned. Mr. Berkman reported to  
25 whom?

1           A     Well, he reported to me on Liberty Cable matters.  
2     He reported to Howard Milstein on other matters involving  
3     other Milstein entities, Milstein Properties, Douglas  
4     Elleman, et cetera.

5           Q     Bertina Ceccarelli reported to whom?

6           A     She reported directly and exclusively to me.

7           Q     And when she was replaced by Jennifer Walden, to  
8     whom did Jennifer report?

9           A     Directly and exclusively to me.

10          Q     Mr. Ontiveros reported to whom?

11          A     To me.

12          Q     Anne Rosenberg?

13          A     To me.

14          Q     And was there an engineering function within  
15     Liberty Cable, as well?

16          A     Yes. The engineering function was -- existed when  
17     I joined Liberty. But it was very routine at that point.  
18     We were just a satellite master antennae company with a very  
19     simple maintenance function to perform. When I joined the  
20     company, I brought in a -- a consulting firm, Joe Stern,  
21     Stern Consulting who were microwave experts and we feel --  
22     and I felt needed substantially more technical advice on how  
23     to expand our microwave network or in fact create our  
24     microwave network which didn't exist.

25                     And after working for us for a period of months,

1 Mr. Stern suggested we really needed an upgraded chief  
2 engineer function to encompass not just maintenance  
3 competence, but also to extend over obtaining FCC licenses  
4 and actually building out a substantial microwave network.  
5 And that engineering function resided in the operations  
6 department and reported to Tony Ontiveros.

7 Q Did Mr. Stern assist you in hiring somebody?

8 A Yes. We asked him for recommendations, and he  
9 gave us several names. And his recommendation among those  
10 names was Behrooz Nourain who we hired for that chief  
11 engineer function.

12 Q And to whom did he report over the course of 1994  
13 through 1995?

14 A He reported to the operations department, to Tony  
15 Ontiveros.

16 Q Okay. Could you explain to the Court your  
17 understanding of the regulatory environment in which Liberty  
18 operated at the point in time when it began using the 18  
19 gigahertz transmission system?

20 A At that point in time, it was a -- an environment  
21 really that didn't exist because there were no to my  
22 knowledge -- and I think to most of our knowledge -- there  
23 was no one operating on 18 gigahertz, at least no private  
24 cable operator operating on the 18 gigahertz frequency.

25 And we had to essentially learn our way with the



1 help of counsel and by talking to people at the FCC about  
2 how to 1) make this application for access to the frequency  
3 and 2) how to apply for licenses once the frequency was  
4 authorized for this type of use, and thirdly, how to obtain  
5 those licenses and, you know, implement them going forward.

6 Q Had Liberty Cable been involved in getting the FCC  
7 to approve the use of 18 gigahertz for private use?

8 A Yes. Liberty had worked with the advice of Pepper  
9 & Corazzini. We had applied for through someone who worked  
10 for us the application to access that frequency and  
11 basically pioneered video on the 18 gigahertz frequency on  
12 the rationale that it would create competition in the video  
13 marketplace that at that juncture was a strong policy of the  
14 FCC.

15 Q And once that process or that frequency was  
16 approved by the FCC, you understood you needed a license in  
17 order to operation along the 18 gigahertz frequency?

18 A Yes, we did.

19 Q Did you create a structure within Liberty to  
20 assure yourself that you would comply with whatever  
21 regulatory structure the FCC had created?

22 A I asked, then, our chief operating officer, Bruce  
23 McKinnon, to work with Todd Parriott at Pepper & Corazzini  
24 to put in place a procedure that would ensure that these  
25 licenses were applied for and were reconciled and accounted

1 for as we expanded the network.

2 Q And did you send a memorandum to Mr. McKinnon to  
3 that effect?

4 A Yes, I did.

5 Q If I could ask you to look at what has been marked  
6 as Liberty/Bureau Exhibit 2 which is before you.

7 JUDGE SIPPEL: That's the one page document?

8 MR. SPITZER: I'm sorry?

9 JUDGE SIPPEL: That's the one page document?

10 MR. SPITZER: That is correct, Your Honor.

11 JUDGE SIPPEL: Okay. The Witness has it.

12 MR. SPITZER: Thank you, sir.

13 BY MR. SPITZER:

14 Q Mr. Price, was this a -- is this a copy of the  
15 memorandum you sent to Mr. McKinnon on or about February  
16 26th, '92?

17 A Yes, it is.

18 Q Okay. Now, if you can just take a quick moment to  
19 read the short document.

20 A Yes, I've read it.

21 Q Okay. Above and beyond this document which you've  
22 referred to, what else did you do to create the structure?

23 A I had meetings with Bruce McKinnon and the  
24 operations staff before this time and after this time to  
25 check to see if they were complying with the procedure to

1 see if they were requesting the licenses to see if they were  
2 coordinating with Washington counsel. And I would speak  
3 with Washington counsel on a regular basis asking them if  
4 there were things we should do or -- or any filings that  
5 should be made that weren't being made. So among my other  
6 duties, I tried to see that there was some kind of follow  
7 up.

8 Q You referred to Washington counsel. Which -- you  
9 listed a number of firms who -- earlier who worked for  
10 Liberty Cable. Which counsel are you referring to who had  
11 this responsibility?

12 A Specifically, Pepper & Corazzini, although I would  
13 talk in discussions with Henry Rivera and the partners at  
14 the Ginsburg, Feldman firm. Some of the issues would  
15 overlap. For example, if Henry and his partners were filing  
16 a -- a Liberty document relating to the FCC annual report to  
17 Congress and it related to our use of the 18 gig frequency  
18 and what we were doing and reporting our position in the  
19 industry and how many sites we were serving, it might -- I  
20 might well talk to the Ginsburg firm about 18 gigahertz  
21 issues at the time, although not to ask them to apply for  
22 licenses.

23 Q Was it your understanding that the attorneys in  
24 Washington had to interact in some manner with the  
25 operations group and the engineering group up in New York in

1 order for this system to work?

2 A Yes. I felt -- and you can see from the context  
3 of the memo -- that it was absolutely critical because the  
4 amount of paper even in the early days when we didn't have -  
5 - when we only were applying for a dozen licenses rather  
6 than dozens of licenses, at that time the flow of paperwork  
7 was substantial. And as a business person, even as a  
8 lawyer, it was not easily decipherable by me, at least in  
9 the form it was arriving raw from the FCC.

10 Q And what was your understanding, if you had one,  
11 about how operations and engineering would interact with the  
12 attorneys in Washington in the '94 through mid-'95 time  
13 frame in this licensing process?

14 A It was my understanding that they would reconcile  
15 the sites to be installed that we had contracted for service  
16 and reconcile them with the applications for licenses being  
17 applied for and the date that the licenses were granted so  
18 we could conform the operations to FCC licensing  
19 requirements.

20 Q Were you involved on a regular basis in that  
21 process?

22 A No, I was not.

23 Q What was your understanding about when you would  
24 get involved or would be asked to get involved in that  
25 process?

1           A     It was my understanding always with our operations  
2 people that not being an engineer or a technical person on a  
3 day-to-day basis, I could not help them; but it was my job  
4 as the chief executive to problem-solve with them or get  
5 involved if they had something that wasn't working,  
6 something that was broken, something that they couldn't fix  
7 themselves or felt that they needed help with. And my  
8 expression was just raise your hand and like a class, I  
9 will, you know, go down the aisle and see what I can do to  
10 help you figure out how to solve the problem.

11           Q     Had there been an instance early in the history of  
12 Liberty Cable where you had gotten involved in this  
13 regulatory process?

14           A     Yes. It was brought to my attention by I believe  
15 the -- the operations people as well as Washington counsel  
16 that, while we had applied for many licenses, based upon the  
17 authorization for access to the 18 gig frequency, that in  
18 fact no licenses were forthcoming. And since we were  
19 building up some name and reputation for being a competitor  
20 to Time Warner and had people coming to us, it was a looming  
21 problem that we couldn't go forward without getting FCC  
22 licenses.

23                     So I asked the Pepper & Corazzini firm,  
24 specifically Todd Parriott, to set up a meeting for me in  
25 Washington so I could go down and effectively plead our

1 case, that we were trying to compete and we thought we were  
2 doing the right thing in terms of applying for authority but  
3 didn't seem to be able to get it and needed advice.

4 Q Could you just give us a time frame in which this  
5 event transpired?

6 A I believe it was fall 1991; October, November, in  
7 that time frame. And I did go to Washington. Todd Parriott  
8 described to me what he called a brown bag lunch at the FCC.  
9 And that turned -- I did go to Washington; met him at his  
10 office; was introduced to Bob Corazzini.

11 I had never been to the firm before or met any of  
12 the people, so it was a good occasion to do so; and  
13 afterwards, went over to the Commission and attended this  
14 session which was in one of the conference rooms at the  
15 Commission where there were approximately 50 people in the  
16 audience and -- who were being addressed by I believe it was  
17 the Private Radio Bureau at that time, which I gather today  
18 is the predecessor of the Wireless Bureau at the FCC.

19 And the questions being asked related to various  
20 private radio functions. I think it included boats and  
21 taxicabs and a whole variety of uses. I specifically asked  
22 what the -- why it was that our licenses were being held up.  
23 And the -- I don't know -- remember exactly who it was who  
24 responded. One of the -- I believe most of the senior  
25 management of the bureau was there.

1           And one of them described the problem as a  
2 computer problem; that because of the frequency being so  
3 new, they in fact didn't have a software program which was  
4 capable of issuing up the licenses and that there was a  
5 technical reason for this delay. And they invited me to  
6 step afterward and discuss the matter further which I did.  
7 And I believe it was Ralph Howler, I think he was the bureau  
8 chief at that point, was really quite responsive.

9           In fact, he was upset to hear about the problem  
10 and suggested that we apply for what he called STAs which  
11 was the first time I heard the term, special temporary  
12 authority, in order to get us started prior to the  
13 Commission being able to release formal licenses.

14           Q     And did you in fact obtain STAs at that point in  
15 time or shortly thereafter?

16           A     Shortly thereafter, we did obtain those STAs.

17           Q     But it was your understanding based on the  
18 structure you created, it was in that type of environment  
19 that you would personally get involved in the process of  
20 obtaining licenses?

21           A     Yes, it was.

22           Q     Over the course of 1994 through early 1995, were  
23 there other instances where you were asked to get involved  
24 in that matter?

25           A     Not -- in -- not specifically in licensing

1 matters, but questions would come up all the time which  
2 would get specifically referred to my attention. There was  
3 a flow of licensing activity going on which sometimes passed  
4 by my desk; not directed to me, but directed to Liberty  
5 Cable or being asked for us to -- to process applications.

6 But what would be directed to me would be a  
7 proceeding at the FCC where someone in the 18 gig  
8 neighborhood or even on that frequency would be asking for  
9 the FCC to consider some other use of the frequency and  
10 would ask for comments from people.

11 And counsel would ask me or operations would clip  
12 this out of the -- some publication and say shouldn't we  
13 participate in this or as a mention in the report to  
14 Congress or -- so there would be regular occasions when I  
15 would be asked to make a policy decision. But I was not --  
16 it was not engaging in the normal licensing process.

17 Q Would you on occasion, however, sign either an  
18 application or an opposition to a document being submitted  
19 by Time Warner in opposition to a Liberty application?

20 A Yes. Those would be policy decisions. Those  
21 would be not in the normal course of our business  
22 interventions where we would be -- had to make a judgement  
23 call, an executive decision if you will; should we  
24 participate, should we change a procedure in place; should  
25 we respond in some way to something else going on that was



1 out of the ordinary.

2 Q And you became aware I would presume that in  
3 January or thereabouts of 1995, Time Warner began to oppose  
4 the applications for licenses that were filed by Liberty  
5 Cable.

6 A Yes, I did.

7 Q Were you told in the period 1994 through the end  
8 of April 1995 before a building was activated?

9 A No, I was not advised of when a building was  
10 activated or it was to be activated.

11 Q And who in fact would have the responsibility of  
12 activating a building?

13 A The operations department.

14 Q And just so it's clear, what do you mean by  
15 activation?

16 A Activation to my mind is the -- the lighting of a  
17 building as we would say; the actual providing of service,  
18 transmission of video to a building through our microwave  
19 network.

20 Q During this same period, 1994 through the end of  
21 April 1995, did you know when particular buildings had  
22 received authorization, whether by means of license or an  
23 STA?

24 A No, I did not.

25 Q Did you maintain any list of such buildings that